

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

JONATHAN DAMRON,

Plaintiff,

v.

CIVIL ACTION NO. 5:21-CV-00085

MAJOR D.J. and
CPT. BURTON and
SGT. LESTER and
SGT. COX. and
CORP. CLEAR and
CORP. WALLS and
CORP. COX and
CORP. TONY and
CORP. HAYS and
CORP. COULTURE and
CORP. GRANT and
CORP. WIMMER and
CORP. POWERS and
CORP. MITCHUM and
CORP. BOOTH and
CORP. STURGIL and
OFFICER MAXWELL and
CORP. SAMPSON and
CORP. PACK and
COUNSELOR MARTIN,

Defendants.

ORDER

Pending is Defendants' Motion to Dismiss [Doc. 31], filed on April 12, 2021. This action was previously referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission of proposed findings and a recommendation ("PF&R"). Magistrate Judge Aboulhosn filed his PF&R on November 8, 2021. Magistrate Judge Aboulhosn recommended the Court grant in part and deny in part Defendants' Motion to Dismiss.

The Court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140 (1985); *see also* 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations *to which objection is made.*” (emphasis added)). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner’s right to appeal the Court’s order. *See* 28 U.S.C. § 636(b)(1); *see also United States v. De Leon-Ramirez*, 925 F.3d 177, 181 (4th Cir. 2019) (Parties may not typically “appeal a magistrate judge’s findings that were not objected to below, as § 636(b) doesn’t require de novo review absent objection.”); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989). Further, the Court need not conduct de novo review when a party “makes general and conclusory objections that do not direct the Court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

If the PF&R was delivered by mail, objections in this case were due on November 26, 2021. No objections were received.


Accordingly, the Court **ADOPTS** the PF&R [**Doc. 36**], **GRANTS** Defendants’ Motion to Dismiss [**Doc. 31**] to the extent Defendants’ request the dismissal of Plaintiff’s claim for monetary damages against Defendants in their official capacities; **DENIES** Defendants’ Motion to Dismiss [**Doc. 31**] to the extent Defendants request the dismissal of Plaintiff’s claim of injunctive relief against Defendants in their official capacities; **DENIES** Defendants’ Motion to Dismiss [**Doc. 31**] to the extent Defendants request the dismissal of Plaintiff’s claims against Defendants in their individual capacities; **GRANTS** Plaintiff permission to amend his Second

Amended Complaint to include the additional facts contained in his Response; and **REFERS** the matter back to Magistrate Judge Aboulhosn for further proceedings.

The Court directs the Clerk to transmit a copy of this Order to any counsel of record and any unrepresented party.

ENTER: December 21, 2021




Frank W. Volk
United States District Judge